

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHERYL BAIR,

Plaintiff,

vs.

SNOHOMISH COUNTY, BERLIN KOFOED
DOES I-X,

Defendants.

)
) Case No. 2:19-cv-00998-BJR

)
) STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. "CONFIDENTIAL MATERIAL"

2 "Confidential" material will include the following documents and tangible things produced
3 or otherwise exchanged: (1) electronically stored information (ESI) and tangible things produced or
4 otherwise exchanged: (2) the complete and unredacted tort claim submissions by Joshua Redding,
5 Jose Nava and Devin Ryan. It shall also include medical information on any party or person
6 regardless of who produces it. The personnel, disciplinary file, including accusations or the
7 psychological file or profile of any person or party, shall also be confidential.

8 3. SCOPE

9 The protections conferred by this agreement cover not only confidential material (as defined
10 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
11 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations,
12 or presentations by parties or their counsel that might reveal confidential material.

13 However, the protections conferred by this agreement do not cover information that is in the
14 public domain or becomes part of the public domain through trial or otherwise.

15 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

16 4.1 Basic Principles

17 A receiving party may use confidential material that is disclosed or produced by another
18 party or by a non-party in connection with this case only for prosecuting, defending, or
19 attempting to settle this litigation. Confidential material may be disclosed only to the categories
20 of persons and under the conditions described in this agreement. Confidential material must be
21 stored and maintained by a receiving party at a location and in a secure manner that ensures that
22 access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of "CONFIDENTIAL" Information or Items.

2 Unless otherwise ordered by the court or permitted in writing by the designating party, a
3 receiving party may disclose any confidential material only to:

4 (a) the receiving party's counsel of record in this action, as well as employees of
5 counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
8 agree that a particular document or material produced is for Attorney's Eyes Only and is so
9 designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this
11 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of
14 confidential material, provided that counsel for the party retaining the copy or imaging service
15 instructs the service not to disclose any confidential material to third parties and to immediately
16 return all originals and copies of any confidential material;

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
18 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
19 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal confidential material must be separately
21 bound by the court reporter and may not be disclosed to anyone except as permitted under this
22 agreement;

1 (g) the author or recipient of a document containing the information or a custodian
2 or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material

4 Before filing confidential material or discussing or referencing such material in court
5 filings, the filing party shall confer with the designating party to determine whether the
6 designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the
7 designating party will remove the confidential designation, whether the document can be
8 redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the
9 meet and confer process, the designating party must identify the basis for sealing the specific
10 confidential information at issue, and the filing party shall include this basis in its motion to seal,
11 along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the
12 procedures that must be followed and the standards that will be applied when a party seeks
13 permission from the court to file material under seal. A party who seeks to maintain the
14 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
15 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
16 the motion to seal being denied, in accordance with the strong presumption of public access to
17 the Court's files.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each party or non-party that designates information or items for protection under this
21 agreement must take care to limit any such designation to specific material that qualifies under
22 the appropriate standards. The designating party must designate for protection only those parts of
23 material, documents, items, or oral or written communications that qualify, so that other portions

1 of the material, documents, items, or communications for which protection is not warranted are
2 not swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions. If it comes to a
7 designating party's attention that information or items that it designated for protection do not
8 qualify for protection, the designating party must promptly notify all other parties that it is
9 withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations

11 Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section
12 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that
13 qualifies for protection under this agreement must be clearly so designated before or when the
14 material is disclosed or produced.

15 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
16 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
17 the designating party must affix the word "CONFIDENTIAL" to each page that contains
18 confidential material. If only a portion or portions of the material on a page qualifies for
19 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
20 making appropriate markings in the margins).

21 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
22 parties and any participating non-parties must identify on the record, during the deposition or
23 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate

1 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days
2 after receiving the transcript of the deposition or other pretrial proceeding, designate portions of
3 the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
4 confidential information at trial, the issue should be addressed during the pre-trial conference.

5 (c) Other tangible items: the producing party must affix in a prominent place on
6 the exterior of the container or containers in which the information or item is stored the word
7 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
8 the producing party, to the extent practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate

10 If timely corrected, an inadvertent failure to designate qualified information or items does
11 not, standing alone, waive the designating party's right to secure protection under this agreement
12 for such material. Upon timely correction of a designation, the receiving party must make
13 reasonable efforts to ensure that the material is treated in accordance with the provisions of this
14 agreement.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges

17 Any party or non-party may challenge a designation of confidentiality at any time. Unless
18 a prompt challenge to a designating party's confidentiality designation is necessary to avoid
19 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or
20 delay of the litigation, a party does not waive its right to challenge a confidentiality designation
21 by electing not to mount a challenge promptly after the original designation is disclosed.

22 6.2 Meet and Confer
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1 The parties must make every attempt to resolve any dispute regarding confidential
2 designations without court involvement. Any motion regarding confidential designations or for a
3 protective order must include a certification, in the motion or in a declaration or affidavit, that
4 the movant has engaged in a good faith meet and confer conference with other affected parties in
5 an effort to resolve the dispute without court action. The certification must list the date, manner,
6 and participants to the conference. A good faith effort to confer requires a face-to-face meeting
7 or a telephone conference.

8 6.3 Judicial Intervention

9 If the parties cannot resolve a challenge without court intervention, the designating party
10 may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance
11 with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be
12 on the designating party. Frivolous challenges and those made for an improper purpose (*e.g.*, to
13 harass or impose unnecessary expenses and burdens on other parties) may expose the
14 challenging party to sanctions. All parties shall continue to maintain the material in question as
15 confidential until the court rules on the challenge.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER 17 LITIGATION OR SUBJECT TO A PUBLIC DISCLOSURE REQUEST

18 If a party is served with a subpoena or a court order issued in other litigation that compels
19 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
20 party must:

21 (a) promptly notify the designating party in writing and include a copy of the subpoena or
22 court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
2 other litigation that some or all of the material covered by the subpoena or order is subject to this
3 agreement. Such notification shall include a copy of this agreement; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
5 designating party whose confidential material may be affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
8 material to any person or in any circumstance not authorized under this agreement, the receiving
9 party must immediately (a) notify in writing the designating party of the unauthorized
10 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
11 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
12 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
13 Agreement to Be Bound" that is attached hereto as Exhibit A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a producing party gives notice to receiving parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B)(6). This
19 provision is not intended to modify whatever procedure may be established in an e-discovery
20 order or agreement that provides for production without prior privilege review. The parties agree
21 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

22 10. NON TERMINATION AND RETURN OF DOCUMENTS
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1 Within 60 days after the termination of this action, including all appeals, each receiving
2 party must return all confidential material to the producing party, including all copies, extracts
3 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
4 destruction. Notwithstanding this provision, counsels are entitled to retain one archival copy of
5 all documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
6 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
7 work product, even if such materials contain confidential material.

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13 The confidentiality obligations imposed by this agreement shall remain in effect until a
14 designating party agrees otherwise in writing or a court orders otherwise.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 DATED this 31st day of October 2019.

17
18 s/ Darryl Parker

Darryl Parker, WSBA #30770
Attorney for Plaintiff

19
20 s/ Katherine Bosch

21 Katherine H. Bosch, WSBA #43122
22 Deputy Prosecuting Attorneys
Attorney for Defendants Snohomish County and Defendant Kofoed
23

1 s/ Bridget Casey

Bridget E. Casey WSBA #30459

2 Deputy Prosecuting Attorneys

Attorney for Defendants Snohomish County and Defendant Kofoed

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13 **ORDER**

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15 The Court having reviewed the foregoing stipulation of the parties, and being duly
16 advised, hereby orders pursuant to CR 26(c) that the parties' disclosure and exchange of
17 Confidential Information, as defined herein, shall be governed by the terms of this Order, and
18 this Order is hereby approved and entered by the Court.

19 DATED this 1st day of November, 2019.

20 
21 THE HONORABLE BARBRA J. ROTHSTEIN

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of Cheryl Bair v. Snohomish County et al, United States District Court Western District of
8 Washington Case No. 2:19—cv—00998—BJR. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
13 of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the Western
15 District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order,
16 even if such enforcement proceedings occur after termination of this action.

17 Date: _____

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19 City and State where sworn and signed: _____

20 Printed Name: _____

21 Signature: _____
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CERTIFICATE OF SERVICE

I, Martha Girma, under penalty of perjury under the laws of the State of Washington,
declare as follows:

I am a Washington resident over the age of 18 and not a party to this action. On the date
and in the manner indicated below, I caused the foregoing (PROPOSED) STIPULATED
PROTECTIVE ORDER and this CERTIFICATE OF SERVICE to be served on:

Attorneys for Defendants:

ADAM CORNELL
Prosecuting Attorney

BRIDGET CASEY, WSBA #30459
KATHERINE BOSCH, WSBA #43122
Deputy Prosecuting Attorneys, Civil Division
Snohomish County Prosecuting Attorney's Office
Robert J. Drewel Building, 7th Floor
3000 Rockefeller Ave., M/S 504
Everett, WA 98201-4046
(425) 388-6341, (425) 388-6333 Fax
bcasey@snoco.org
kbosch@snoco.org

☐ By First Class Mail
☐ By Legal Messenger
☒ By ECF
☐ By Federal Express/Express Mail/United Parcel Service
☐ By Email

DATED: October 31, 2019, at Seattle, Washington.

/s/ Martha Girma
Martha Girma, Legal Assistant